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06 UNITED STATES DISTRICT COURT  
07 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

08 CARLOS OLIVARES-GUERRERO, ) CASE NO. C07-0050-JLR-MAT  
09 )  
09 Petitioner, )  
10 )  
10 v. ) REPORT AND RECOMMENDATION  
11 )  
11 ALBERTO R. GONZALES, et al., )  
12 )  
12 Respondents. )  
13 \_\_\_\_\_ )

14 I. INTRODUCTION AND SUMMARY CONCLUSION

15 Petitioner Carlos Olivares-Guerrero is a native and citizen of Mexico. On January 5, 1995,  
16 petitioner was ordered deported from the United States to Mexico, but was never deported. (Dkt.  
17 #6, Ex. 2). On January 8, 2007, the U.S. Immigration and Customs Enforcement (“ICE”) Seattle  
18 fugitive operations team arrested petitioner at his home, and began the process of removing  
19 petitioner to Mexico pursuant to the 1995 deportation order. *Id.* On January 12, 2007, petitioner,  
20 proceeding through counsel, filed a Petition for Writ of Habeas Corpus, and a Motion for Stay of  
21 Removal. (Dkts. #1 and #2). Petitioner argues that he should not be removed from the United  
22 States because he is eligible to apply for cancellation of removal. He asks this Court to enjoin

01 respondents from enforcing his 1995 deportation order. This Court subsequently entered an Order  
02 granting petitioner a temporary stay of removal pending briefing and a resolution of petitioner's  
03 request for stay. (Dkt. #3). On January 18, 2007, respondents filed an opposition to petitioner's  
04 motion for stay of removal. (Dkt. #6). Respondents argue that, under the REAL ID Act of 2005,  
05 the Court lacks jurisdiction over petitioner's habeas petition to the extent he challenges his  
06 removal, not his detention, and thus precludes the Court from staying petitioner's removal. (Dkt.  
07 #6).

08 After carefully reviewing the entire record, I recommend that petitioner's motion for stay  
09 of removal (Dkt. #2) be DENIED.

## 10 II. DISCUSSION

11 The standard of review for a stay of removal is set forth in *Abassi v. INS*, 143 F.3d 513  
12 (9th Cir. 1998); *see also Andreiu v. Ashcroft*, 253 F.3d 477, 483 (9th Cir. 2001) (en banc)  
13 (concluding that § 1252(f)(2) does not limit the power of federal courts to grant a stay of  
14 removal). Under *Abassi*, petitioner must show either: (1) the probability of success on the merits  
15 plus the possibility of irreparable harm, or (2) that serious legal questions are raised and the  
16 balance of hardships tips in petitioners favor. *Abassi*, 143 F.3d at 514. The Court finds that  
17 petitioner meets neither prong of the *Abassi* test.

18 First, petitioner cannot satisfy the requirement that he demonstrate a probability of success  
19 on his claim that his application for cancellation of removal must be adjudicated before any action  
20 may be taken to remove him from the United States based on his prior order of deportation. The  
21 Ninth Circuit has held that the pendency of an application for collateral administrative relief does  
22 not entitle an alien to a stay of removal. *See Armstrong v. I.N.S.*, 445 F.2d 1395, 1396 (9th Cir.

1971) (holding that a pending visa application does not entitle an alien to a stay of deportation to await the issuance of a visa); *also Bowes v. I.N.S.*, 443 F.2d 30, 31 (9th Cir. 1971) (holding that the pendency of an application does not entitle an alien to a delay in deportation proceedings); *Obitz v. I.N.S.*, 623 F.2d 1331 (9th Cir. 1980) (same).

Although deportation proceedings may sometimes be deferred or canceled to enable an alien to qualify for some collateral immigration benefits, an alien has no absolute right to such dispensation. Thus, aliens cannot demand such relief as a matter of right because they have sought collateral benefits that may have a bearing on their deportability.

6 Gordon, Mailman & Yale-Loehr, Immigration Law and Procedure § 72.03[2][e] (rev. ed. 2000). Moreover, petitioner has not demonstrated that this Court even has jurisdiction to consider his habeas petition. Respondents argue that this Court lacks subject matter jurisdiction over this case, contending that 8 U.S.C. § 1252(g), prohibits petitioner's claims because they arise from the decision of the Attorney General to execute his removal order. (Dkt. #6 at 3-4).

Section 242(g) provides:

Except as provided in this section and notwithstanding any other provision of law, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g)(emphasis added). In *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482, 119 S. Ct. 336 (1999), the Supreme Court held that Section 242(g) should be read narrowly so as to apply to “only three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, *adjudicate* cases, or *execute* removal orders.’” The Ninth Circuit has since “heeded the Supreme Court’s directive and construed [242(g)] so as to apply only to those aspects of the deportation process *specifically* referred to in the statutory

language.” *Sissoko v. Rocha*, 440 F.3d 1145, 1156 (9th Cir. 2006)(citing *Wong v. U.S.*, 373 F.3d 952, 963-64 (9th Cir. 2004); *U.S. v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004)).

Here, petitioner is challenging respondents’ execution of his removal order to Mexico. Petitioner, however, fails to indicate how this Court has jurisdiction to consider such claims. As a result, the Court finds that petitioner has not demonstrated a probability of success on the merits, and therefore, has not satisfied the first prong of the *Abassi* test.

In order to grant a stay of removal under the second prong of the *Abassi* test, the Court must find that serious legal questions have been raised and that the balance of hardship tips sharply in petitioner’s favor. *Abassi*, 143 F.3d at 514. As discussed above, petitioner has not established that this Court has jurisdiction to consider petitioner’s claims. Accordingly, the Court finds that no substantial legal questions have been raised before this Court. Thus, petitioner does not satisfy the second prong of the *Abassi* test, and a stay of removal should not be granted.

### III. CONCLUSION

For the foregoing reasons, I recommend that petitioner’s motion for stay of removal (Dkt. #2) be DENIED.

DATED this 23rd day of January, 2007.

  
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Mary Alice Theiler  
United States Magistrate Judge